

DEPARTMENT OF STATE REVENUE

03-20140352.LOF

Letter of Findings Number: 03-20140352
Withholding Tax
For Tax Year 2003 through 2007

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Withholding Tax - Nonresident Partner Withholding.

Authority: IC § 6-3-4-12; IC § 6-8.1-5-1; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the imposition of additional withholding tax.

STATEMENT OF FACTS

Taxpayer is an Indiana partnership that installs equipment in medical facilities. Most of Taxpayer's work is conducted in Indiana. Taxpayer has a nonresident partner located outside the United States. The Indiana Department of Revenue ("Department") conducted an audit of Taxpayer's books and records and found that Taxpayer is a non-filer for nonresident partner withholding contrary to Indiana statute and regulation. The Department issued proposed assessments for additional withholding tax, penalties, and interest. Taxpayer protested the proposed assessments for additional withholding tax. An administrative hearing was held, and this Letter of Findings results. Additional facts will be provided as needed.

I. Withholding Tax - Nonresident Partner Withholding.

DISCUSSION

Taxpayer protests the proposed assessments for additional withholding tax. All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). The issue is whether Taxpayer met its burden to prove the assessment is incorrect.

Pursuant to IC § 6-3-4-12, every partnership is required to withhold income tax from distributions made to its nonresident partners and pay such tax to the state of Indiana each month. IC § 6-3-4-12(a). Each such partnership is also required to file a return, "showing the total amounts paid or credited to its nonresident partners, the amount deducted therefrom in accordance with [Indiana statute], and such other information as the department may require." IC § 6-3-4-12(c). A partnership's failure to comply with these requirements to withhold/remit the income tax and file a return may result in penalties and interest. IC § 6-3-4-12(d). The income tax required to be withheld from distributions made to a nonresident partner "shall be considered to be in part payment of the tax imposed on such nonresident partner for his taxable year" IC § 6-3-4-12(e).

Pursuant to the audit report, Taxpayer is a partnership which makes distributions to a nonresident partner. During the tax years at issue, Taxpayer did not withhold or remit income tax from distributions made to its nonresident partner. Additionally, Taxpayer failed to file any withholding tax returns during the tax years at issue.

Taxpayer argues that its nonresident partner has filed its income tax returns for the tax years at issue showing that it owed no income tax, and that this should relieve Taxpayer of the obligations outlined in IC § 6-3-4-12. It is clear that these two obligations are related, because the statute states that income tax withheld by a partnership on behalf of a nonresident partner "shall be considered to be in part payment of the tax imposed on such nonresident partner for his taxable year" IC § 6-3-4-12(e). However, it is also clear that the obligation for a nonresident partner of an Indiana partnership to file income tax returns is separate and distinct from the obligation of an Indiana partnership to withhold and remit income tax from distributions made to its nonresident partner. The obligation of a nonresident partner of an Indiana partnership to file income tax returns is further distinct from the obligation of an Indiana partnership with a nonresident partner to file withholding tax returns. IC § 6-3-4-12

imposed distinct obligations on Taxpayer to withhold income tax from distributions to its nonresident partner and to file withholding tax returns, regardless of that nonresident partner's ultimate income tax liability. Therefore, Taxpayer is not relieved of its distinct statutory obligations because the nonresident partner may, in the end, owe no income tax. Additionally, Taxpayer is not relieved of its distinct statutory obligations because its nonresident partner may have met its own distinct statutory obligation to file its income tax returns.

Taxpayer has not met its burden to demonstrate that the Department's assessment is incorrect, and its protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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